No. 4841.

IN THE
United States Circuit Court of Appeals
FOR THE NINTH CIRCUIT

PETER CHORAK,

Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

UPON WRIT OF ERROR TO THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON, NORTHERN DIVISION.

PETITION FOR REHEARING.

JOHN F. DORE,
F. C. REAGAN,
Attorneys for Plaintiff-in-Error.
Seattle, Washington.

J. L. MACDONALD CO., PRINTERS AND PUBLISHERS, SEATTLE.

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Comes now the plaintiff-in-error and respectfully petitions this court for a rehearing in the above-entitled cause.

The petitioner was charged with the sale of a pint of whiskey on May 10, 1925. Testimony as to a sale at another time was introduced against him.

In the opinion it is stated that ordinarily this testimony would have been incompetent and that this case forms no exception to the rule. The opinion then says that the only testimony offered in support of the prior sale was the testimony of the witness who testified to the second sale and, following the case of *Stubbs vs. United States,* 1 Fed (2d) 837, this is held not to be erroneous.

We respectfully contend that the doctrine announced in the *Stubbs* case is not founded on reason. Our understanding of it is that, where a sale is alleged in the indictment to have taken place on a certain date, and the jury convicts the person of that sale, the testimony given by the chief witness as to other sales, as long as they are not corroborated, are permissible. The reason being advanced that if the jury discredits the witness as to the sale

on the date alleged in the indictment, the jury would naturally discredit the testimony as to prior sales.

Such a statement overlooks the fact that it may have been the uncorroborated testimony as to the prior sale that caused the jury to place credence upon the testimony as to the sale specified in the indictment. It may be that the jury reasons that the witness testifying to so many prior sales must necessaril ybe telling the truth, and decide because of this fact to believe the witness as to the sale on the date laid in the indictment. There might be some outstanding fact in connection with the prior sale which convinces the jury that the witness is entitled to belief where credence would be denied if the testimony were confined to the date specified in the indictment.

Of course unless the defendant is convicted he can never complain of the admission of collateral offenses against him. To say that such evidence may be admitted as long as it is uncorroborated is a rule of evidence that had its birth in the case of *Stubbs vs. United States,* 1 Fed. (2d) 837.

We respectfuly contend that the rule against

the admission of collateral offenses, made for the protectionof t he defendant, ceases to operate if the doctrine of the *Shubbs* case is to be maintained.

There are very few cases where there is any testimony as to prior collateral offenses, except by the main prosecuting witness. That this is true is somewhat borne out by the fact that the question has only been called to the attention of this court twice in the last five years, viz., in the *Stubbs* case and in this case.

We respectfully contend that the doctrine is erroneous; that it has no foundation in authority and no support in reason.

Respectfully submitted,

JOHN F. DORE,

F. C. REAGAN,

Attorneys for Plaintiff-in-Error.

I hereby certify that in my judgment this petition for rehearing is well founded, and that it is not interposed solely for the purpose of delay.

JOHN F. DORE,

Attorney for Plaintiff-in-Error.